

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

*USA v. Dana Jarvis, et al.*  
*CR 05-1849 JH*

**BY THE DIRECTION OF THE HONORABLE JUDITH C. HERRERA:**

**JURY TRIAL NOTICE**

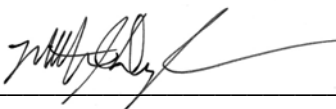
**IT IS ORDERED** that the cases listed below are hereby set for **JURY SELECTION/TRIAL** on **JANUARY 26, 2009 AT 9:00 A.M.** (trailing docket) before the Honorable Judith C. Herrera, at the U.S. District Courthouse, Brazos Courtroom--5th Floor, 333 Lomas Blvd. N.W., Albuquerque, New Mexico. Certain pretrial deadlines are set forth in the table below.

Event	Date/Deadline
<b>JURY SELECTION/TRIAL</b>	Monday, January 26, 2009 at 9:00 A.M.
Calendar Call	Thursday, January 8, 2009 at 1:30 P.M.
Status Conference	Wednesday, August 6, 2008 at 9:30 A.M.

For all pretrial dates and deadlines, please refer to the attached "Pretrial Deadlines Before the Honorable Judith C. Herrera".

Inquiries regarding this setting should be directed to Irene Duran, Courtroom Deputy to Judge Judith C. Herrera, at **(505) 348-2398**. Other useful information may be obtained by visiting the Honorable Judith C. Herrera's Chambers Page at [www.nmcourt.fed.us](http://www.nmcourt.fed.us).

MATTHEW J. DYKMAN, Clerk



A copy of this was notice was mailed or electronically transmitted to all counsel of record as they are reflected on the Court's docket.

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**PRETRIAL DEADLINES AND INSTRUCTIONS**  
**Before the Honorable Judith C. Herrera**

**PLEASE NOTE:**

- 1) Throughout these instructions, the term “trial” refers to commencement of the trailing docket. Therefore, all dates operate off of the current jury selection date or date upon which the trailing docket begins. **Counsel must seek leave of Court in the form of a written motion to extend any pretrial deadlines.**
- 2) Where a submission deadline falls on a weekend or a federal holiday, the deadline will be the next working day after the weekend or holiday.

EVENT	DEADLINE	COMMENT
<b>PERTAINING TO CIVIL CASES</b>		
Witness Identification	Fifteen (15) working days before trial	Witnesses shall be identified in accordance with the Pretrial Order but, in any event, no later than fifteen (15) working days before trial.
Exchange of Exhibits	Fifteen (15) working days before trial	Exhibits shall be marked and identified prior to trial, with plaintiff’s exhibits identified on yellow labels by number and defendant’s exhibits identified blue labels by letter.
Objections to Exhibits	Ten (10) working days before trial	You should specify the Rule of Evidence or other legal authority upon which your objection is based. In most cases, the Court will consider objections and admit exhibits prior to trial.
Motions in <i>Limine</i> and Other Admissibility Issues	Fifteen (15) working days before trial	Does <u>not</u> include <i>Daubert</i> motions. Challenges pursuant to <i>Daubert</i> shall be made by the <u>dispositive</u> motions deadline as set forth in the scheduling order.
Responses to Motions in <i>Limine</i> and Other Admissibility Issues	Eight (8) working days before trial	

**PRETRIAL DEADLINES AND INSTRUCTIONS**  
**Before the Honorable Judith C. Herrera**

<b>EVENT</b>	<b>DEADLINE</b>	<b>COMMENT</b>
Witness and Exhibit Lists	Five (5) working days before trial	<p>Complete lists of witnesses to be called at trial with a brief summary of their testimony are to be filed on the docket. The order of the witnesses is not binding, but known witnesses not listed in accordance with this procedure will not be allowed to testify.</p> <p>The following shall be filed on the docket by the deadline: (a) a consolidated exhibit list identifying all exhibits the parties have stipulated to being admissible; (b) a consolidated exhibit list identifying all exhibits the parties have stipulated to being authentic, but to which there are other objections; and (c) a separate contested exhibit list on which the parties could not reach a stipulation.</p>
<b>PERTAINING TO CIVIL CASES</b>		
Statement of Case	Five (5) working days before trial	The parties must confer and submit an agreed statement of the case to the Court that will be read to the jury panel during jury selection.
Expert Reports	In accordance with Rule 26(a)(2) of the Federal Rules of Civil Procedure	When calling an expert witness, it is the responsibility of counsel to establish his/her qualifications to express an opinion under Rule 702 after which counsel must move his/her acceptance by the court as an expert. In that connection, counsel must inform the Court the particular field in which counsel offers the witness as an expert. As in other areas, cumulative expert testimony will not be permitted.
Depositions	Fifteen (15) working days before trial	Notify opposing counsel and the court of such intended use of deposition. If a deposition is used in part, counsel shall highlight the parts to be used for the Court. Plaintiff will use a yellow marker and defendant a blue marker. This does not apply to cross-examination or rebuttal.
Deposition Objections	Ten (10) working days before trial	Opposing counsel shall file with the Clerk objections to any material.

**PRETRIAL DEADLINES AND INSTRUCTIONS**  
**Before the Honorable Judith C. Herrera**

EVENT	DEADLINE	COMMENT
Memoranda of Law	Five (5) working days before trial	Trial briefs outlining the basic legal theories, anticipated evidence in support of such theories, and the legal basis of any anticipated evidentiary disputes are encouraged and should be filed with the Clerk.
Non-Jury Trials - Findings of Fact	Ten (10) working days before trial	Findings of fact and conclusions of law shall be filed with the Clerk, with references to exhibits and proposed testimony. <u>Each party shall also submit the proposed Findings of Fact &amp; Conclusions of Law by e-mail to <a href="mailto:jchproposedtext@nmcourt.fed.us">jchproposedtext@nmcourt.fed.us</a></u>

PERTAINING TO CIVIL <u>and</u> CRIMINAL CASES		
Jury Instructions	Ten (10) working days before jury selection	Please refer to the attached "Preparation of Jury Instructions".
<i>Voir Dire</i> Exchange	Five (5) working days before jury selection	In the average case, each counsel will be permitted ten (10) minutes to <i>voir dire</i> the venire panel. <b>Do not argue the case or cite legal principles in your voir dire.</b> Requested <i>voir dire</i> shall be exchanged between counsel and submitted to the Court by the deadline contained herein. If counsel cannot agree on proposed <i>voir dire</i> , any objections must be brought to the Court's attention at least two (2) working days prior to trial.
Objections to Opponent's <i>Voir Dire</i>	Two (2) working days before trial	
Courtesy Copies of Exhibits for the Court	Beginning of Trial	Parties shall submit two (2) courtesy copies of exhibits, in notebooks, to the Court at the beginning of the trial.
PERTAINING TO CRIMINAL CASES		

**PRETRIAL DEADLINES AND INSTRUCTIONS**  
**Before the Honorable Judith C. Herrera**

Witness and Exhibit Lists	Five (5) working days before trial	It will facilitate an orderly and efficient trial for counsel to exchange witness and exhibit lists five (5) working days prior to trial so that evidentiary problems can be anticipated and resolved correctly. In the event this requirement poses a danger to potential witnesses or for other good cause, the parties should approach the Court to seek relief from this requirement prior to the deadline.
Governments Notice of Rule 40(b) or 609(b) Evidence	Ten (10) working days before trial	Counsel will not get into possible areas of reversible error without prior Court approval, whether in opening statements or questioning witnesses. (e.g., commenting on a defendant's silence, invoking constitutional rights, raising Rule 404(b), 608 or 609 material, etc.)
Motions in <i>Limine</i> and Other Admissibility Issues	Ten (10) working days before trial	Does <u>not</u> include <i>Daubert</i> motions. Challenges pursuant to <i>Daubert</i> shall be made prior to the dispositive motions deadline usually established at arraignment.
Responses to Motions in <i>Limine</i> and Other Admissibility Issues	Five (5) working days before trial	
Motion(s) for Continuance	Motion(s) for continuance should be filed in accordance with 18 U.S.C. §3161(h)(8)(a), specifically setting forth the factual grounds justifying the continuance.	

## **PRETRIAL DEADLINES AND INSTRUCTIONS**

**Before the Honorable Judith C. Herrera**

### **PREPARATION OF JURY INSTRUCTIONS**

1. File a numbered original set of instructions with citations with the Clerk of Court. A copy should be electronically submitted to chambers. The instructions shall list authority at the bottom of each instruction (Fig. 1.)
2. Submit an unnumbered original set of instructions without citations to chambers. (Fig. 2.)
3. Submit no more than one instruction per page.
4. Carefully proofread each instruction for errors in spelling, grammar, punctuation, citations, and for unintended deviations from pattern instructions used as sources.
5. Submit a cover sheet on all sets of instructions.
6. Submit all your instructions to chambers by e-mail to [jchproposedtext@nmcourt.fed.us](mailto:jchproposedtext@nmcourt.fed.us).
7. If the New Mexico Uniform Jury Instructions are not applicable, Judge Herrera prefers that instructions, to the extent possible, follow the criminal pattern jury instructions for the Tenth Circuit and the civil pattern instructions for the Fifth Circuit.

Instruction No. _____
Members of the Jury:
In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to determine what evidence is proper for your consideration. It is also my duty . . .
Citation . . .

**Fig. 1: With Citation**

Instruction No. _____
Members of the Jury:
In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to determine what evidence is proper for your consideration. It is also my duty . . .

**Fig. 2: Without Citation**